

1 NOEL P. SHILLITO, WSBA #6764  
2 LAW OFFICE OF NOEL SHILLITO  
3 1919 NORTH PEARL STREET #C-2  
4 TACOMA WA 98406  
5 (253) 572-4388

HON. BRIAN D. LYNCH  
CHAPTER 7  
HEARING DATE: NOVEMBER 7, 2018  
HEARING TIME: 9:00AM  
RESPONSE DATE: OCTOBER 31, 2018

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON AT TACOMA

10 In Re:

11 IAN H. SCHUMACHER and KERI J.  
12 SCHUMACHER,

13 Debtors.

No. 17-43172

MOTION DIRECTING TRUSTEE TO  
ABANDON DEBTOR'S REAL  
PROPERTY LOCATED AT 3722 114<sup>TH</sup>  
AVE E, EDGEWOOD, WA 98372

14 COMES NOW, the Debtors, Ian and Keri Schumacher, by and through their attorney  
15 of record, Noel P. Shillito of the Law Office of Noel Shillito, P.S. and hereby moves this  
16 Court for an order to abandon property of the estate pursuant to 11 USC §549 and BR  
17 6007.

18 The Debtors filed a Chapter 13 petition on August 23, 2017. The proceeding was  
19 subsequently converted to a Chapter 7 petition on November 8, 2017. Kathryn A. Ellis was  
20 duly appointed as Chapter 7 Trustee.

21 The Debtors have a 100% interest in real property located at 3722 114<sup>th</sup> Avenue E,  
22 Edgewood, WA 98372, APN: 042015-5-023 and legally described as follows:

23  
24 Section 15 Township 20 Range 04 Quarter 13 L 3 OF SP 2013-08-08-  
25 5002 TOG/W AN UNDIV INT IN WETLAND TR FOR TAX PURPOSES  
26 OUT OF 1-006 SEG 2014-0159 JP 10/14/13 JP

MOTION DIRECTING TRUSTEE TO  
ABANDON DEBTORS' REAL PROPERTY

-1-

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1 Pursuant to an appraisal dated July 13, 2017 by the David Pollack, the property has  
2 an appraised market value of \$513,000. See, Exhibit "A".

3 The Trustee appointed real estate broker, Rich Kim, on February 2, 2018 to review  
4 and attempt to market the property. Rich Kim has not received any offers that the Debtors  
5 are aware of to date.

6 The Debtors respectfully request this Court to direct the Trustee to abandon this  
7 property because more than sufficient time (nearly one year) has passed since the Debtors'  
8 Chapter 13 was converted to a Chapter 7 proceeding and the Trustee has been unable to  
9 sell the property.

10 The liens on the Debtors' residence along with their claimed homestead exemption  
11 far exceed its value leaving no benefit to the creditors of the estate.

12 The approximate property value and liens at the time of filing are as follows:

13	Appraised Value	\$513,000.00
14	BECU - 1 <sup>st</sup> DOT Current Balance	<\$362,103.00>
15	Pierce County Property Taxes (2018)	<\$ 8,083.92>
16	<b>Subtotal:</b>	<b>\$132,885.08</b>
17	Estimated Closing Costs (9%)	<\$ 46,170.00>
18	<b>Subtotal:</b>	<b>\$ 96,643.08</b>
19	Debtor's Homestead Exemption	<\$ 125,000.00
20	<b>Negative Equity Available to Creditors</b>	<b>&lt;\$ 28,356.92&gt;</b>

21 The above figures do not include the cost to have the Debtors' septic system  
22 inspected and brought into compliance with the Pierce County Health Department. At the  
23 very least, the septic system will need to be pumped. This cost, along with any other  
24 potential issues that may be discovered upon inspection, would be the responsibility of the  
25 seller.

26 The background facts surrounding the Debtors' house are unique. The main reason  
the Debtors filed bankruptcy in the first place was because they had sued the builder of  
their home. In trial in Superior Court, the Debtors won. The judge agreed that the Debtors'  
home had numerous construction defects and found for the Debtors against the builder.

1 The builder subsequently won on appeal. Nevertheless, the Court of Appeals did not rule  
2 on the structural defects but instead, ruled that according to the terms of the construction  
3 contract, the builder was excused from performance. Therefore, the defects that were the  
4 underlying cause of the lawsuit remain unresolved. As a result, the Debtors home will  
5 require additional repairs before the Debtors believe it would be suitable for a conventional  
6 lender to provide a loan for a potential buyer. See, Declaration of the Debtors in support  
7 of Motion to Abandon.

8  
9 Given the current condition of the property, it is very unlikely the Trustee will  
10 receive an offer sufficient to pay the mortgage liens, outstanding property taxes and the  
11 Debtor's homestead exemption.

12  
13 WHEREFORE, the Debtors pray for the following relief:

- 14 1. An Order directing the Trustee to abandon the Debtors' real property  
15 located at 3722 114<sup>th</sup> Avenue E., Edgewood, WA 98372 as being of no  
16 further value to the estate;  
17 2. For such other and further relief as this Court deems just and equitable.

18  
19 Dated this 15<sup>th</sup> day of October, 2018.

20 LAW OFFICE OF NOEL SHILLITO, P.S.

21  
22  
23 By: /s/ Noel P. Shillito  
24 Noel P. Shillito, WSBA #6764  
25 Attorney for Debtor  
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